



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

*ye*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,790	09/27/2001	Mike Farwick	32301WD230	9133
7590 08/24/2007 SMITH, GAMBRELL & RUSSELL, LLP SUITE 800 1850 M STREET, N.W. WASHINGTON, DC 20036			EXAMINER STEADMAN, DAVID J	
			ART UNIT 1656	PAPER NUMBER
			MAIL DATE 08/24/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/963,790

Applicant(s)

FARWICK ET AL.

Examiner

David J. Steadman

Art Unit

1656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5, 9, 12, 34, 35, 37, 38, 44 and 51-55 is/are pending in the application.

4a) Of the above claim(s) 55 is/are withdrawn from consideration.

- 5) ☒ Claim(s) 5, 9, 12, 34, 35, 37, 38, 44 and 51-54 is/are allowed.

- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.

- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Status of the Application***

- [1] Claims 5, 9, 12, 34-35, 37-38, 44, and 51-55 are pending in the application.
- [2] Applicant's amendment to the claims, filed on 6/7/07, is acknowledged and has been entered into the application. This listing of the claims replaces all prior versions and listings of the claims in accordance with 37 CFR 1.121(c).
- [3] Applicant's arguments filed on 6/7/07 in response to the Office action mailed on 4/10/07 have been fully considered and are deemed to be persuasive to overcome the rejections of record and claims 5, 9, 12, 34-35, 37-38, 44, and 51-54 appear to be in a condition for allowance.
- [4] In the claim amendment filed on 3/12/07, claim 55 was drawn to a method for using the claimed product and was co-examined with the product claims. However, claim 55 has been amended such that it is drawn to a method of using a *C. glutamicum* with an attenuated *deaD* gene. The product used in the method of claim 55 is encompassed by Group II of the Office action mailed on 9/9/03, which is separate and distinct from the elected invention of Group I for reasons set forth in the 9/9/03 Office action.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 55 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Art Unit: 1656

**[5]** This application is in condition for allowance except for the following formal matters: withdrawn claim 55 remains pending in the application.


Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Steadman whose telephone number is 571-272-0942. The examiner can normally be reached on Mon to Fri, 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David J. Steadman, Ph.D.  
Primary Examiner  
Art Unit 1656